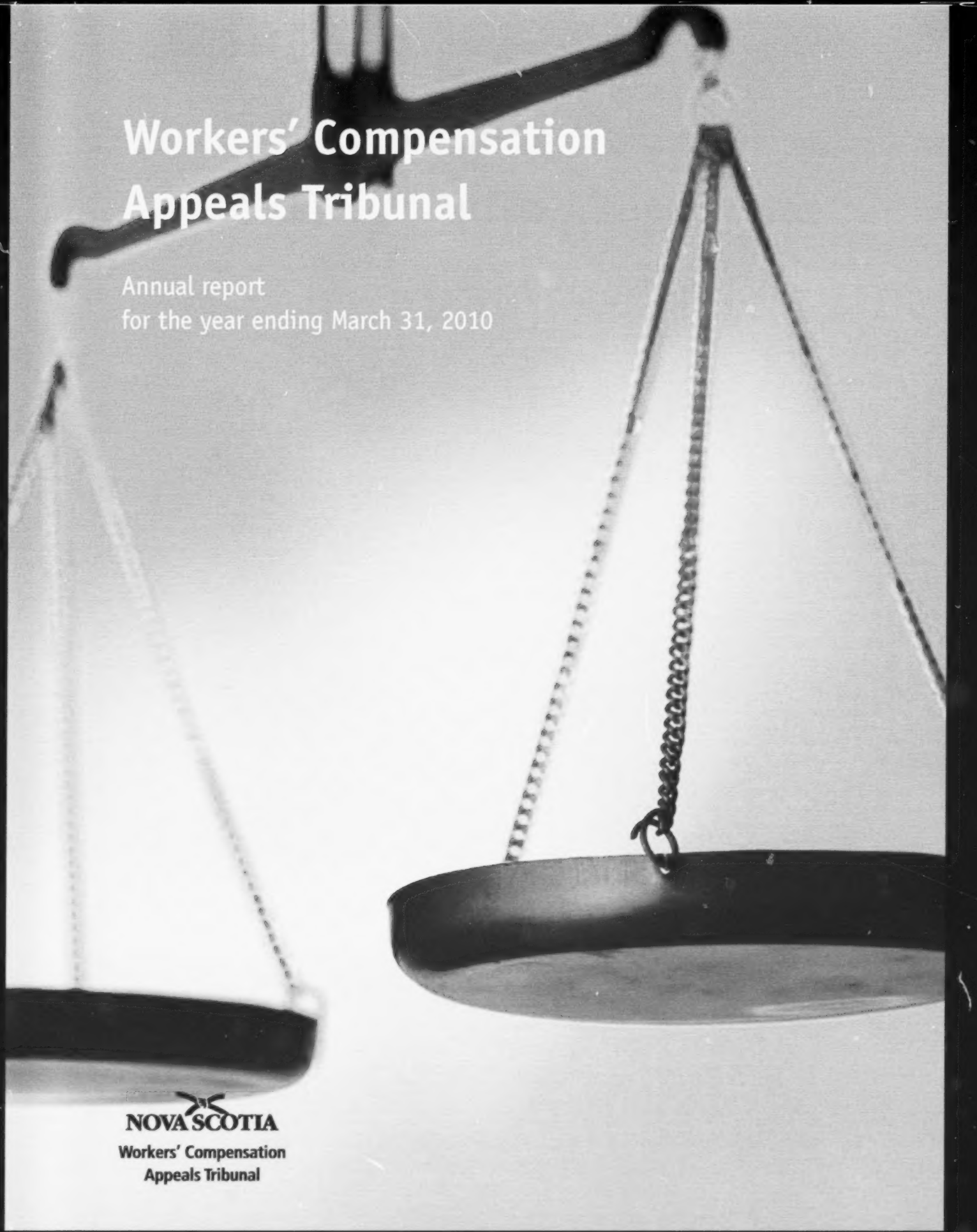

Workers' Compensation Appeals Tribunal

Annual report
for the year ending March 31, 2010

NOVA SCOTIA
Workers' Compensation
Appeals Tribunal

Workers' Compensation Appeals Tribunal

Annual report
for the year ending March 31, 2010

NOVA SCOTIA
Workers' Compensation
Appeals Tribunal

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Workers' Compensation Appeals Tribunal

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Ross Landry
Minister of Justice

Dear Honourable Minister:

The Workers' Compensation Appeals Tribunal is pleased to present its Annual Report for the fiscal year ending March 31, 2010.

Respectfully submitted,

Louanne Labelle

Louanne Labelle
Chief Appeal Commissioner

NOVA SCOTIA
Workers' Compensation Appeals Tribunal

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To Her Honour
The Honourable Mayann E. Francis, O.N.S.
Lieutenant-Governor of Nova Scotia

May It Please Your Honour:

I have the honour to submit the Annual Report of the Workers' Compensation Appeals Tribunal for the fiscal year ending March 31, 2010.

Respectfully submitted,

Ross Landry
Minister Responsible for Part II of the *Workers' Compensation Act*

Tribunal Personnel 2009–10

Mary Jewers
Supervisor, Office Services (on leave)

Colleen Bennett-Skinner
Executive Assistant to the Chief Appeal Commissioner/
Supervisor, Office Services (temporary)

Charlene Downey
Secretary/receptionist

Melanie Fisher
Secretary

Samantha MacGillivray
Secretary

Diane Smith
Scheduling coordinator

Appeal Commissioners

Louanne Labelle
Chief Appeal Commissioner

Leanne Rodwell Hayes
Alison Hickey
Glen Johnson
Gary Levine
Brent Levy
Sandy MacIntosh
Andrew MacNeil
David Pearson
Andrea Smillie

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Executive Summary

The Workers' Compensation Appeals Tribunal (the tribunal) hears appeals by workers and employers from final decisions of hearing officers of the Workers' Compensation Board (the board) and determines whether the Workers' Compensation Act (the act) bars a right of action against employers. The tribunal is legally and administratively separate from the board, reporting to the Minister of Justice, and ensures an independent and impartial review of board decisions.

The tribunal also works with several partner agencies within the framework known as the Workplace Safety and Insurance System (WSIS). Partner agencies are the board, the Workers' Advisers Program (WAP), and the Occupational Health and Safety division of the Department of Labour and Workforce Development.

This annual report will highlight the processing and adjudication of appeals as well as the tribunal's participation in joint initiatives with system partners.

Operations Overview

Unlike the previous several years, entitlement to chronic pain benefits was no longer the primary issue on appeal at the tribunal. During the year 2009–10, entitlement to new or increased benefits for permanent impairment was the issue most often on appeal, in 27 per cent of appeals, whereas entitlement to chronic pain benefits was on appeal in 22 per cent of appeals, down from 35 per cent in the preceding year.

The decrease in appeals dealing with chronic pain has affected several areas of tribunal operations, such as the number of appeals heard by way of oral hearing, the number of unrepresented workers, and appeal outcomes, but it has not affected appeal volumes.

Although the tribunal anticipated a continued decrease in appeal volumes due to the completion by the board's internal appeals department of decisions dealing with entitlement to chronic pain benefits under the chronic pain regulations, appeal volumes actually increased slightly to 849 from 834. The tribunal issued a correspondingly higher number of decisions (783 in 2009–10 as compared to 762 in 2008–09).

The tribunal heard most appeals (68 per cent) by way of oral hearing, a decrease from last year's total of 74 per cent.

The fair, efficient, and timely processing of appeals remained a priority for the tribunal throughout 2009–10. At year end, 475 appeals remained outstanding as compared to 506 at the end of 2008–09. Timeliness continued to meet performance expectations, as 65 per cent of decisions were released within six months of the date the appeal was received, as compared to 62 per cent in 2008–09.

Appeals continue to be filed predominantly by workers (96.4 per cent). Employers are participating in increased numbers in worker claim appeals. Employers filed 29 appeals in 2009–10, and a slight majority involved the extent of benefits paid to workers. Many employers are unrepresented, but can benefit from the advice offered by the Employer Advisor Program.

The overall overturn rate by the tribunal increased to 45 per cent from 39 per cent the year previous. Of note, the number of appeals withdrawn increased to 97 as compared to 47 for 2008–09, reflecting the work of our special projects officer as part of our initiative to resolve appeals without the necessity of a hearing.

Many workers who appear before the tribunal, particularly workers appealing chronic pain decisions, are unrepresented or have representatives who are not members of the WAP. However, there was a marked change in overall representation as WAP represented 62 per cent of workers in 2009–10 and 38 per cent of workers were either not represented or represented by injured worker groups. Representation in 2008–09 was evenly divided at 50 per cent.

The tribunal communicates directly with unrepresented participants to provide them with information on appeal processes, whether they be workers or employers.

Appeals to the Court of Appeal decreased slightly during 2009–10. At year end, there remained only 8 appeals at the Court of Appeal.

The tribunal continued to issue a consistent and coherent body of decisions, providing clarity and guidance to adjudicators, injured workers, and employers throughout the system.

Again, I would like to recognize the individual contributions of all tribunal staff to the efficient and fair resolution of appeals during this past year. Their dedication and commitment ensured that the tribunal maintained not only its efficient operations, but also the standard of quality and consistency expected by all participants.

Interagency Cooperation

As Chief Appeal Commissioner, I sit on the Heads of Agencies Committee, which oversees implementation of the WSIS strategic plan. I also meet regularly with the Chief Workers' Adviser, the Manager of Internal Appeals, the Manager of the board's Client Services department, and board legal counsel to discuss issues arising from the adjudication of claims and appeals. This group forms the Issues Resolution Working Group (IRWG), whose mandate is to develop and implement issue resolution initiatives to support improved communication, information sharing, and overall efficiency of the workers' compensation system.

During 2009–10, IRWG collaborated on developing an Issues Resolution Strategy Framework, a document outlining our efforts to improve issue resolution by focusing on three components: improving decision quality, encouraging early resolution, and reducing litigiousness. The document was shared with stakeholders who were invited to comment on the strategy and to collaborate in the implementation of initiatives to support the strategy.

A key initiative that followed was the creation of a WSIS liaison officer at the internal appeals level of the board to support the early resolution component of the strategy. This position built upon the success of the special projects officer pilot at the tribunal.

During the year 2009, the board supported a secondment of a senior employee to the tribunal as a special projects officer to conduct early and in-depth reviews of appeal files to identify issues and explore ways to resolve those issues by other means (other than a hearing) where possible. The special projects officer explored resolution by discussion with the board and representatives of the parties involved. He also played a major role in communicating with unrepresented participants. The secondment was extended to the end of December 2009, as the WSIS liaison officer position was to be created in early 2010.

Interaction with Stakeholders

As Chief Appeal Commissioner, I take the opportunity to speak to injured workers' groups and employer representatives to obtain feedback on tribunal processes. These meetings also contribute to a better understanding of the system.

In early 2010, the tribunal updated its practice manual to emphasize early review and resolution of appeals together with a facilitation process to encourage a more collaborative approach to resolving appeals. These changes, as well as the new WSIS liaison officer position, were discussed at a meeting of employer and worker representatives hosted by the tribunal.

The tribunal's special projects officer and I also spoke to a meeting of representatives of injured workers and employers to obtain feedback on the tribunal's experience with early review and resolution. The feedback was very positive with general agreement that these efforts should be made earlier in the process. This recommendation is currently being implemented by the WSIS liaison officer pilot project.

On a yearly basis, I meet with the board's Board of Directors to bring them up to date on operations at the tribunal. I also attend the stakeholder consultation sessions hosted by the coordinating committee (the Deputy Minister of Labour and Workforce Development and the Chair of the board's Board of Directors) where employer and worker representatives discuss future directions for the system.

On May 12, 2009, the Deputy Minister of Labour and Workforce Development and the Chair of the board's Board of Directors hosted the fifth annual meeting of stakeholders. This was an opportunity for partner agencies such as the tribunal to answer questions from stakeholders on tribunal operations.

Employer and Worker Surveys

In 2009, Corporate Research Associates conducted an independent survey of workers and employers who had participated in appeals at the tribunal level within the previous six months. Results of the worker survey were compared to the last survey done in 2005. The 2009 survey included the first employer survey conducted by the tribunal, so that comparison to previous results was not possible for this group.

Satisfaction levels amongst workers have decreased since 2005, not unexpectedly, as appellant satisfaction is influenced by appeal outcomes.

Both surveys indicate the continuing need for enhanced communication with appeal participants to improve understanding of all aspects of appeals, from appeal processes to decision clarity.

Employers and workers think it should take 12 weeks or less to resolve an appeal. The tribunal's target is 6 months. The primary reason for delays in resolving appeals is the time representatives take to obtain additional evidence. Therefore, the tribunal needs to better manage expectations in regard to the time it takes to resolve appeals. We also will continue to encourage early resolution where that appears possible.

Financial Operations

In 2009–10, the tribunal's total expenditures were within 78 per cent of the original authority and within 97 per cent of our revised forecast. Net expenditures totaled $1,575,796, representing a slight increase from the previous year.

Key Initiatives for the Coming Year

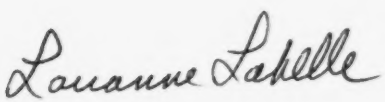
The tribunal's primary goals, year over year, consist of ensuring fair, timely, and efficient adjudication of appeals and providing consistent, high-quality decision making.

We will strive to improve tribunal processes and service delivery by responding to worker and employer satisfaction surveys conducted in 2009. Particularly, we will continue our efforts to educate, inform, and assist unrepresented appeal participants and continue our efforts to improve communication with system participants such as injured workers and employer associations.

The tribunal will cooperate with partner agencies within the workers' compensation system, particularly in implementing an issue resolution strategy aiming at a less adversarial system.

We will also implement a facilitation process at the tribunal level to follow-up on our early resolution pilot project.

The tribunal will continue to advocate for and encourage initiatives that are designed to ensure a more streamlined and efficient appeal system, where issues on appeal at the tribunal are well defined and fully investigated. In this way, we will avoid unnecessary delays and ongoing adjudication at multiple levels of the system.



Louanne Labelle
Chief Appeal Commissioner

Introduction

The tribunal hears appeals from final decisions of hearing officers of the board and determines whether the act bars a right of action against employers. The tribunal is legally and administratively separate from the board and ensures an independent and impartial review of board decisions.

The tribunal also works with several partner agencies within the framework known as the WSIS. Partner agencies are the board, the WAP, and the Occupational Health and Safety division of the Department of Labour and Workforce Development.

This annual report highlights the processing and adjudication of appeals, as well as the tribunal's participation in joint initiatives with system partners.

Tribunal mandate and performance measures

While governed by the same enabling statute as the board, the tribunal is legally and administratively separate from it, and is ordinarily not bound by board decisions or opinions. This ensures a truly independent review of contested outcomes.

In the processing and adjudication of appeals, the tribunal strives to strike a balance between procedural efficiency and fairness. Its work is directed by principles of administrative law, by statute, and by decisions of superior courts.

Its performance is shaped by, and measured against, several parameters drawn from the act and by its own survey of user groups.

The tribunal's decisions are written. Appeal commissioners strive to release decisions within 30 days of an oral hearing or the closing of deadlines for written submissions, instead of the legislated period of 60 days.

New appeals are processed within 15 days of receipt by the tribunal.

Essentially, the tribunal can hear an appeal within 45 days of receiving notice that the participants are ready to proceed.

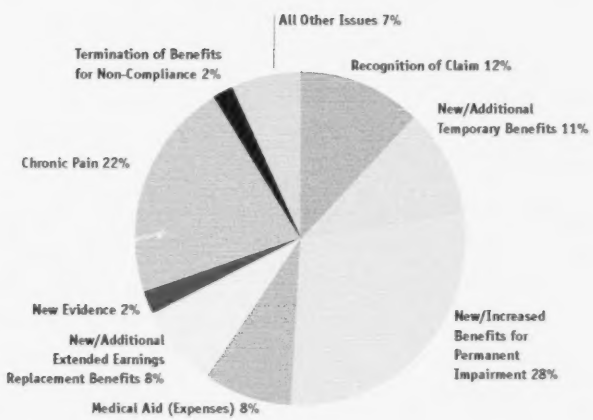
Operations Overview

Unlike the previous several years, entitlement to chronic pain benefits was no longer the primary issue on appeal at the tribunal. During the year 2009–10, entitlement to new or increased benefits for permanent impairment was the issue in 27 per cent of appeals, with entitlement to chronic pain benefits on appeal in 22 per cent of appeals, down from 35 per cent in the preceding year (see Figure 1).

The decrease in appeals dealing with chronic pain has affected several areas of tribunal operations, such as the number of appeals heard by way of oral hearing, the number of unrepresented workers, and appeal outcomes, but it has not affected appeal volumes.

Please see Appendix containing specific data for the following figures.

Figure 1
Decisions by Issue Categories – Worker


All Other Issues 7%
Termination of Benefits for Non-Compliance 2%
Recognition of Claim 12%
New/Additional Temporary Benefits 11%
Chronic Pain 22%
New Evidence 2%
New/Additional Extended Earnings Replacement Benefits 8%
Medical Aid (Expenses) 8%
New/Increased Benefits for Permanent Impairment 28%

Although the tribunal anticipated a continued decrease in appeal volumes due to the completion by the board's internal appeals department of decisions dealing with entitlement to chronic pain benefits under the chronic pain regulations, appeal volumes actually increased slightly to 849 from 834 (see Figure 2). The tribunal issued a correspondingly higher number of decisions (783 in 2009–10 as compared to 762 in 2008–09) (see Figure 3).

Figure 2
Appeals Received

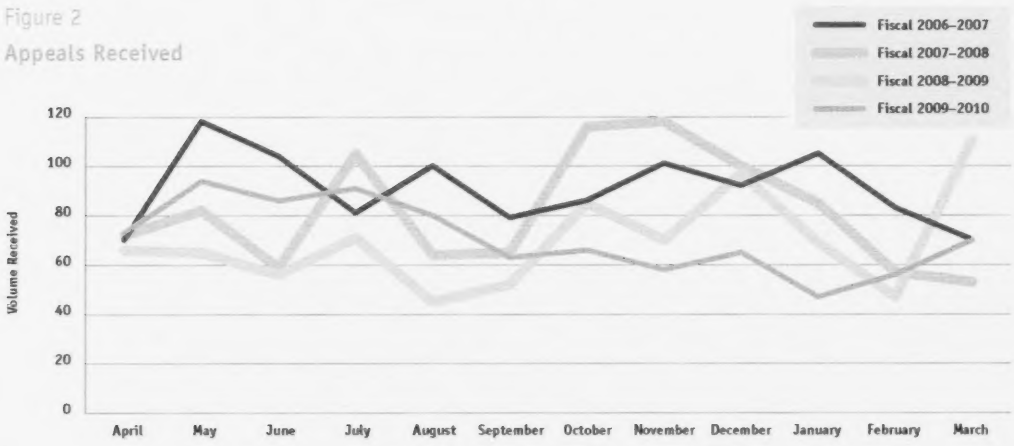
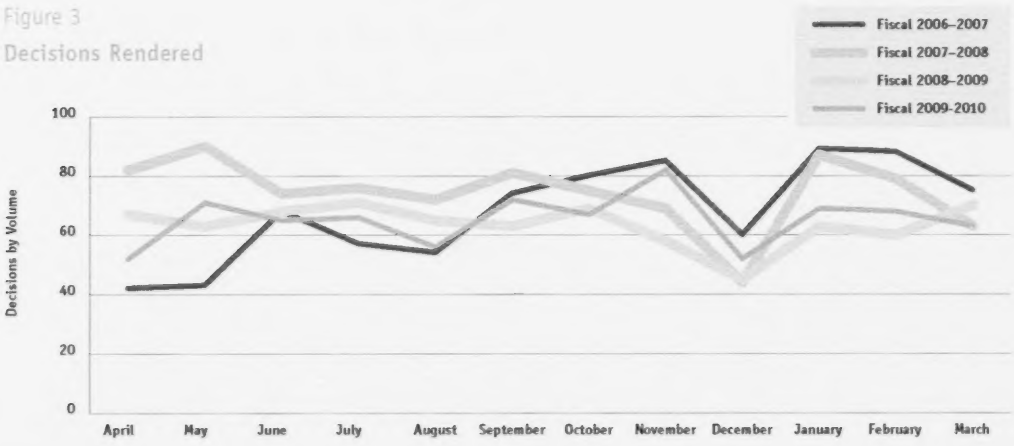


Figure 3
Decisions Rendered



The tribunal heard most appeals by way of oral hearing (68 per cent), a decrease from last year's total of 74 per cent (see Figure 4).

The fair, efficient, and timely processing of appeals remained a priority for the tribunal throughout 2009–10. At year end, 475 appeals remained outstanding, compared to 506 at the end of 2008–09 (see Figure 5). Timeliness continued to meet performance expectations, with 65 per cent of decisions released within six months of the appeal being received, compared to 62 per cent in 2008–09 (see Figure 6).

Figure 4
Decisions by Mode of Hearing

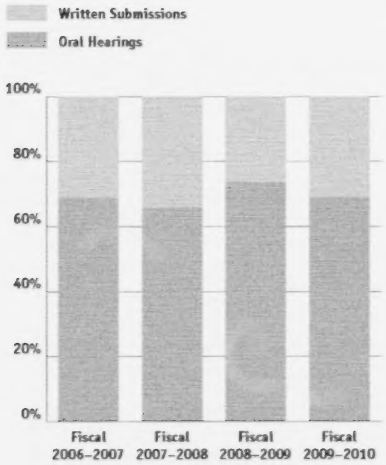


Figure 5

Appeals Outstanding at Year End

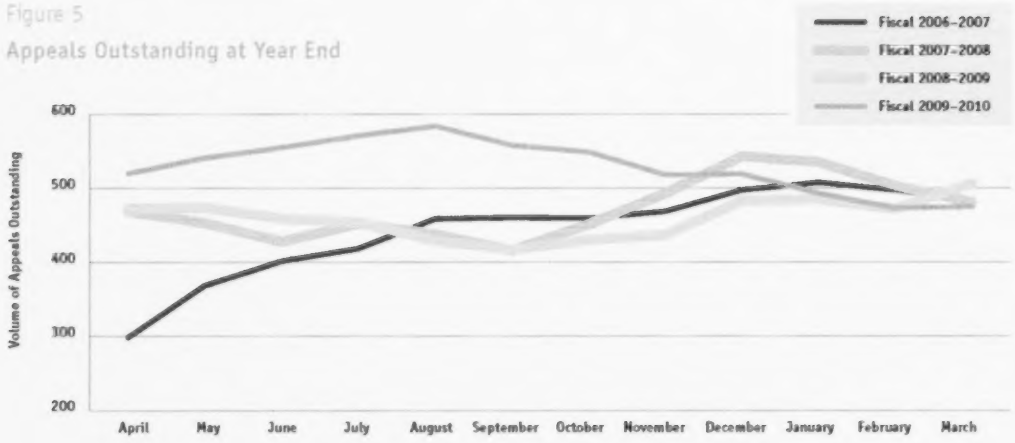
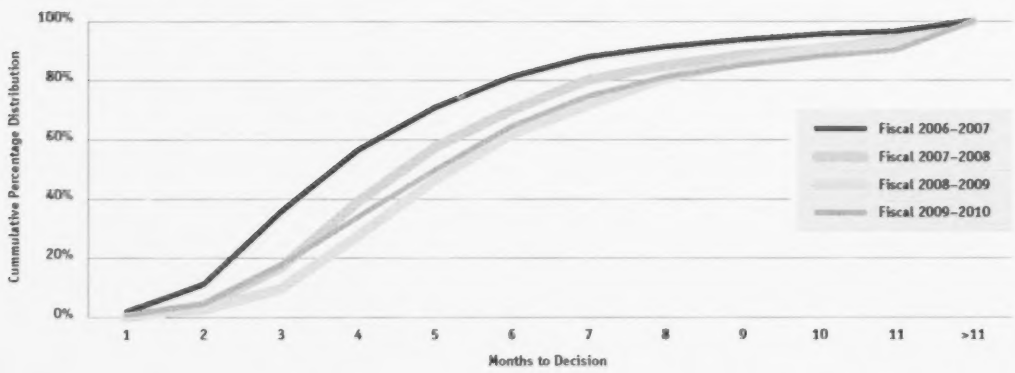


Figure 6

Timeliness to Decision



Appeals continue to be filed predominantly by workers (96.4 per cent) (see Figure 7). Employers are participating in increased numbers in worker claim appeals. Employers filed 29 appeals in 2009–10, and a slight majority involved the extent of benefits paid to workers (see Figure 8). Many employers are unrepresented, but may seek advice offered by the Employer Advisor Program without direct cost.

Figure 7
Decisions by Appellant Type

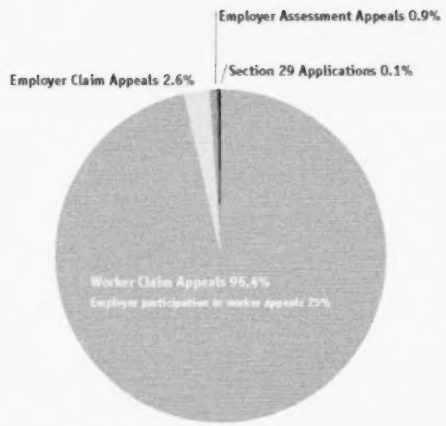
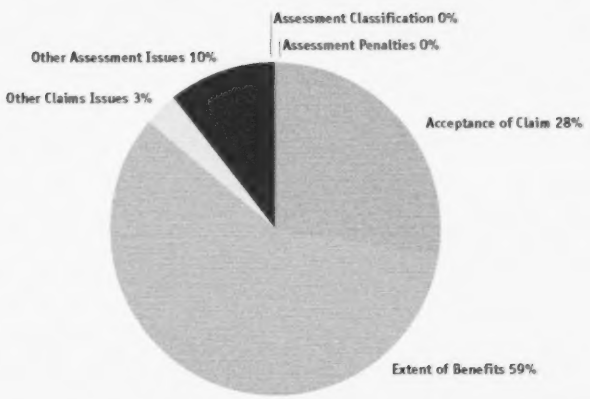

Employer Assessment Appeals 0.9%
Section 29 Applications 0.1%
Employer Claim Appeals 2.6%
Worker Claim Appeals 96.4%
Employer participation in worker appeals 25%

Figure 8
Decisions by Issue Categories – Employer



The overall overturn rate by the tribunal increased to 45 per cent from 39 per cent the year previous (see Figure 9). Of note, the number of appeals withdrawn increased to 97 from 47 in 2008–09, reflecting the work of our special projects officer as part of our initiative to resolve appeals without the necessity of a hearing.

Many workers who appear before the tribunal, particularly workers appealing chronic pain decisions, are unrepresented or have representatives who are not members of the WAP. However, there was a marked change in overall representation as WAP represented 62 per cent of workers in 2009–10 and 38 per cent of workers were either not represented or represented by injured worker groups (see Figure 10). Representation in 2008–09 was evenly divided at 50 per cent.

Figure 9
Decisions by Outcome

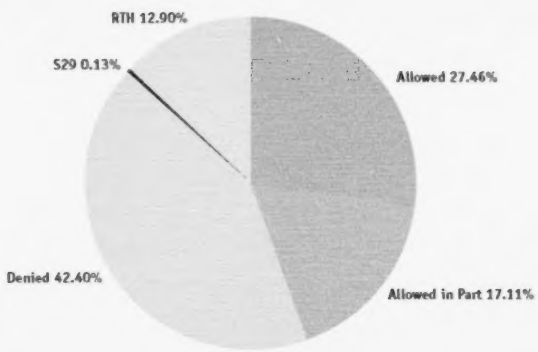
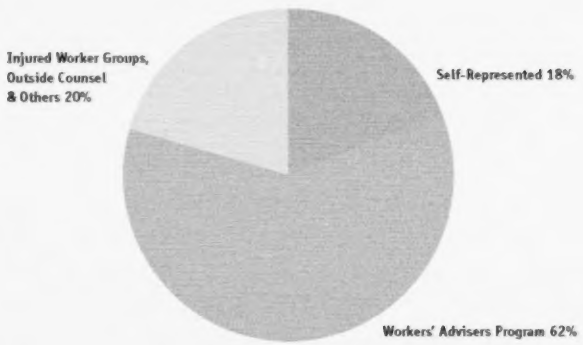


Figure 10
Decisions by Representation

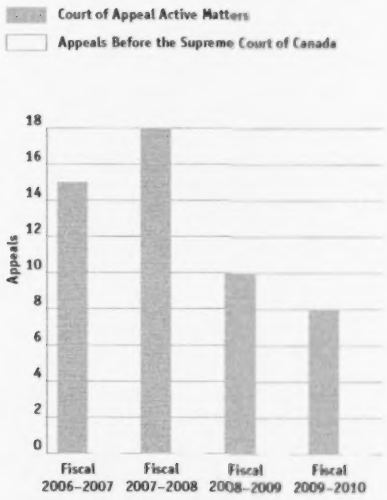


The tribunal communicates directly with unrepresented participants, whether they be workers or employers, to inform them about appeal processes.

Appeals to the Court of Appeal decreased slightly during 2009–10. At year end, there remained only 8 appeals at the Court of Appeal (see Figure 11).

The tribunal continued to issue a consistent and coherent body of decisions, providing clarity and guidance to adjudicators, injured workers, and employers throughout the system.

Figure 11
Appeals Before the Courts at Year End



Tribunal-Appellant Interaction

The tribunal exists to adjudicate appeals by workers and employers from final decisions of the board and to consider applications concerning the "right to sue" under s. 29 of the act. To improve service to participants in those appeals and applications, the tribunal regularly evaluates its interactions with participants.

Appeal Management

The tribunal regularly reviews its appeal management process to ensure that sufficient information is provided to, and effective communication is used with, all participants in an appeal proceeding.

Appeal participants represented by legal counsel are provided with standard deadlines in appeals proceeding by written submission. Appeals proceeding by oral hearing that involve workers with WAP representatives are scheduled through the tribunal's monthly docket days. This allows advisers to communicate directly with the tribunal's registrar to address appeal issues or readiness status.

Appeals proceeding by oral hearing that involve both the WAP and employers (whether or not represented by legal counsel) are scheduled by conference call with the registrar. Various other matters – witness lists, expert reports, and other preliminary matters – may also be addressed, in addition to the setting of the hearing date, venue, and duration. When an employer is not represented by counsel, the employer is contacted in advance of the conference, so that the procedures and expectations of the conference can be discussed.

The greatest challenge of appeal management is the striking of the balance between providing sufficient preparation time, on the one hand, and ensuring that the process (and decision) remains timely, on the other, as all participants have an interest in both.

Participants without representation

Throughout 2009, worker and employer participants without representation were contacted, for the most part, by the special projects officer Tim McInnis. He explained typical hearing procedures and scheduled many hearings. The objective of the telephone contact was to reassure the participants that it would not be onerous or intimidating, even when the other participant was represented by legal counsel.

In addition, the special projects officer reviewed the files for unrepresented participants and appeals where the representative had indicated that early resolution might be an option – the form now allows a participant to indicate that they are open to early review and resolution. In these cases, and in others for which the special projects officer felt that early resolution might be initiated, participants or their representatives were contacted.

In 2009, the special projects officer reviewed and made inquiries on 471 appeals. Of these, 53 (11.25 per cent) were resolved or withdrawn.

The special project officer position expired at the end of December 2009. In his final report, Mr. McInnis suggested that a mandatory, direct referral for early resolution was required, because all parties had to agree to the review before the appeal could be considered for early resolution. This proved challenging in some cases.

The early resolution project at the tribunal reduced the number of s. 251 referrals back to the hearing officer and also led to the withdrawal of appeals for which there was no remedy (where, for example, a worker had already received the maximum pain-related impairment rating or the maximum permanent medical impairment rating for his or her condition, based on the evidence on file).

Mr. McInnis reported that, overall, the project highlighted the importance of dealing with issues at a stage earlier than the tribunal level.

In response to the tribunal's experience, a liaison officer position was introduced at the board in February 2010. The liaison officer will deal with many of the situations dealt with by the special projects officer, but at an earlier stage. It is hoped that the board's liaison officer will help to facilitate the changes recommended by the special projects officer.

Freedom of information and protection of privacy

Tribunal decisions contain personal and business information, particularly medical information. Hearings are held in camera. The decisions are provided to appeal participants including the worker, the board, and the employer. Beginning in January 2010, decisions are now published on the Canadian Legal Information Institute's free public website at www.canlii.org. Decisions prior to January 2010 are available free to the public through the Department of Labour and Workforce Development website at www.gov.ns.ca/lwd/databases.

The tribunal is governed by Part II of the act. The legislation does not specifically permit the publication of decisions. However, the tribunal has adopted a practice manual, available online, which sets out the tribunal's procedures and rules for the making and hearing of appeals as authorized under s. 240 of the act.

The tribunal's practice manual advises of the publication of tribunal decisions and provides as follows:

> 14.00 PUBLICATION OF TRIBUNAL DECISIONS
>
> 14.10 General
>
> Tribunal decisions include a cover page setting out the names of participants and representatives. This information is not found in the body of the decision. The Tribunal endeavours to exclude any information from the body of a decision that could identify the participants.
>
> Decisions made prior to January 1, 2010, without identifying features, are available through the Nova Scotia Department of Labour and Workforce Development website. The database is developed and maintained by the Nova Scotia Labour and Workforce Development Library. Anyone wishing to use the database should contact the Labour and Workforce Development Library at 422-1318.
>
> Decisions made after January 1, 2010, without identifying features, are available on the Canadian Legal Information Institute's free website: www.canlii.org.

14.20 Personal Identifiers in Decisions

Generally, decisions are written without personal identifiers for participants, except on the cover page. The names of participants, lay witnesses and others (where the use of names would tend to identify the participants), are not used in Tribunal decisions. Witnesses may be identified by their role, for example, the "worker" or the "employer", or by initials.

Expert witnesses may be referred to by name. However, if an appeal commissioner considers that the use of an expert's name might identify the participant, the expert witness may be referred to by title, for example, the worker's attending physician, or by initials.

The names of representatives will generally not be used in the body of a decision. Instead, they may be referred to by their role, such as the worker's representative. Board claim file numbers or employer registration numbers are not included in the body of a decision.

Quotations contained within tribunal decisions are edited to protect privacy. This will normally be accomplished by substituting a descriptive term for a name and using square brackets to show the change, e.g., [the Worker].

A footnote at the bottom of the first page of every decision indicates that the participants have not been referred to by name in the body of the decision as the decision may be published. The publication versions of the decisions on public databases do not include any of the names of the participants nor claim numbers. These appear on the cover page of a decision.

Further vetting occurs after the decision has been released and prior to publication, if circumstances warrant. The tribunal receives requests to withhold decisions from publication due to the extremely sensitive material contained in some of the decisions. These requests are considered and decisions may be withheld from publication.

The tribunal has adopted a decision quality guide that outlines quality standards for decision making. It includes a section concerning privacy issues, which states that "decisions should be written in a manner that minimizes the release of personal information." Ultimately, a decision maker must have the discretion to include in a decision reference to evidence that the decision maker finds relevant to support the findings outlined in the decision.

Worker claim files are released to employers after vetting by the tribunal for relevance. The tribunal's file release policy ensures compliance with FOIPOP without compromising the need of participants to know the evidence on appeal. Of particular concern to the tribunal is the need to ensure that personal worker information is not used for an improper purpose or improperly released or made public by a third party. The tribunal's correspondence accompanying file copies has also been revised to reflect these requirements and to refer to appropriate sanctions.

The tribunal rarely receives FOIPOP applications. Applications regarding claim files are referred to the board as they remain the property of, and are held by, the board, unless there is an active appeal. If there is an active appeal, no FOIPOP application need be made by an appeal participant, as the act provides for distribution of relevant claim files to appeal participants.

In 2009–10, one FOIPOP complaint was filed with the Review Office. The tribunal provided the information requested to the Review Office; the matter is pending.

Most FOIPOP applications for generic information particular to the tribunal are addressed through the tribunal's Routine Access Policy, which is posted on the tribunal's website.

Decisions for the year 2009–10

The tribunal's business is to adjudicate appeals from decisions of the board, and to consider applications brought under s. 29 of the act to determine whether a party has a right to sue in the civil courts.

Adjudication is the tribunal's principal activity, and any decision may illuminate or advance the tribunal's approach to an issue, even those in already well-developed areas of adjudication. For the interest of advocates and stakeholders, a detailed discussion of noteworthy decisions, selected from the 783 decisions issued in the year 2009–10, is provided below.

Noteworthy Decisions (by issue)

Arising Out Of and in the Course of Employment

In *Decision 2009-510-AD* (January 29, 2010), the tribunal considered the situation of a healthcare worker who fell on the front steps of her home and fractured her wrist, having returned to her home and having been on-call. The tribunal found that the worker's work was completed when she left the hospital and there was no indication that she worked at home. Accordingly, it found that her fall did not occur in the course of her employment. This decision is under appeal. A decision from the Court of Appeal on a case involving similar issues (*Decision 2008-487-AD* (February 9, 2009)) is pending.

The tribunal, in *Decision 2009-379-AD* (February 18, 2010), recognized a worker to be in the course of her employment when she slipped on a snow bank on a public sidewalk while leaving work. The tribunal determined that she was only at that location due to her employment and was within the sphere of her employment when the accident occurred. While the employer's duty to clear snow was for the benefit of the public at large, it was also reasonably incidental to the ingress and egress to the employer's premises.

Causation

The tribunal had a number of noteworthy decisions regarding recognition of various forms of cancer.

In *Decision 2007-809-AD* (June 17, 2009), the tribunal accepted that the worker's non-Hodgkin's lymphoma was causally connected to his exposures at work. The worker had been employed as a tester of propane tanks. He was exposed to quantities of naturally occurring radioactive material or "NORM" which were found to be "as likely as not" the cause of his cancer.

The tribunal recognized a worker's claim for the development of pre-cancerous facial lesions in *Decision 2009-488-AD* (February 25, 2010). The worker was a bus driver. The tribunal accepted that it was just as likely as not, given the asymmetric distribution of the worker's lesions, that occupational sun exposure was a relevant factor in the worker's skin cancer. The argument was that the lesions were on the left side of the worker's face, which would be the side most exposed to sun through the window of the bus. This decision is currently on appeal to the Nova Scotia Court of Appeal.

Chronic Pain

A consistent challenge to adjudication in chronic pain appeals has arisen where awards of permanent impairment made prior to the enactment of the Chronic Pain Regulations have been made in the absence of significant, objective, physical findings. The Workers' Compensation Appeal Board frequently made such awards. In *Decision 2009-189-AD* (September 11, 2009), the tribunal found that although it appeared that the appeal board's award had been made on the basis of pain with no objective findings, which could equate to compensation for "chronic pain," the worker was still entitled to an assessment for a pain-related impairment [PRI]. The tribunal determined that there was no authority given by the act or the regulations to deny a worker an assessment for a PRI once he had been found to have "chronic pain."

The issue of apportioning a chronic pain award has been before the tribunal this year. In *Decision 2009-392-AD* (October 30, 2009), the tribunal referred the question of the applicability of s. 10(5) of the act to a worker's PRI to the board. In that case, there was evidence that the worker had a pre-existing pain condition. Given that "chronic pain" has generally been accepted to be multi-causal by its nature, it will be interesting to see whether the board sees any role for s. 10(5) in apportioning PRI ratings.

The tribunal continued to find that the Pain Assessment Tool at Table 18-3 of the American Medical Association's Guides to the Evaluation of Permanent Impairment [the AMA Guides] should be applied as objectively as possible. In *Decision 2008-554-AD* (April 30, 2009), the tribunal looked at the application of the category of "medication use" in Table 18-3. The tribunal determined that whether or not the worker could or should have been on heavier pain relief medication earlier in his treatment was irrelevant in applying Table 18-3 objectively. The tribunal further held that when evaluating "medication use" one was to consider only medication and not other types of pain relief treatment.

It has been well established that it is possible for a worker to have both a PRI and a permanent medical impairment [PMI] in relation to the same pain. In *Decision 2009-331-AD* (October 27, 2009), the tribunal specifically directed the board, in the interests of complete adjudication, to expressly address a worker's entitlement to a PMI assessment within the context of a chronic pain determination.

Hearing Loss

Over the past year, a number of issues involving compensation for hearing loss and tinnitus have come to the fore. The tribunal has considered whether aspects of the board's policy on hearing loss (1.2.5AR) are consistent with the act. It is fair to say that the issue of compensation for hearing loss or tinnitus that does not meet the threshold for a PMI is somewhat unsettled.

Within the realm of hearing loss adjudication, the tribunal has also considered the application of apportionment principles and the test for determining whether a claim for hearing loss that has not been reported within the time limits set out in s. 83 is statute-barred.

Key to the tribunal's adjudication of hearing loss cases have been section 12 of the act, which requires a PMI for hearing loss before a personal injury can be considered to have occurred, and the requirement of board policy that a worker have "an acceptable claim for hearing loss" before any claim for tinnitus will be recognized.

In *Decision 2009-94-AD* (June 16, 2009), the worker was seeking a finding that his hearing loss and tinnitus were compensable on the basis of occupational noise. The worker's injury had arisen prior to January 1, 2000, and, therefore, the board's guidelines for the assessment of permanent medical impairment [the PMI guidelines] were applicable to his case. The worker's hearing loss did not meet the decibel (db) threshold for a PMI, although his right ear met the threshold for the provision of hearing aids. The tribunal found that the worker's right ear hearing loss was attributable to occupational noise and determined, despite the level of hearing loss in either ear not qualifying the worker for a PMI, that he had an acceptable claim for noise-induced hearing loss and the board was directed to consider his tinnitus claim.

A contrary conclusion was reached in *Decision 2009-135-AD* (February 8, 2010). The tribunal confirmed that hearing loss was an occupational disease and applied s. 12 of the act. The worker's db of hearing loss did not qualify him for a PMI according to the AMA Guides, and, therefore, no personal injury could be found to have occurred. The tribunal found that the board's hearing loss policy was not inconsistent with the act, as it required that a personal injury must have occurred before benefits could be paid. The worker was not awarded hearing aids for tinnitus caused by noise-induced hearing loss, as his hearing loss did not meet the threshold for a PMI according to the AMA Guides.

In *Decision 2009-216-AD* (June 29, 2009), the tribunal considered the appropriate test to be used in determining when the time should start running in a claim for hearing loss made after the five-year limitation period set out in s. 83(6) of the act. In the decision on appeal to the tribunal, the hearing officer had used a "reasonable person" test, stating it to be "whether a reasonable person in the circumstances would have known of his or her hearing loss and that it was caused by workplace exposure." The tribunal determined that the "reasonable person test" imported an objective standard that was not consistent with the more subjective test set out in s. 83(6) of the act. It stated the test to be used as: "When did the worker learn that he or she suffers from the occupational disease of noise-induced hearing loss?"

In *Decision 2009-385-RTH* (July 24, 2009), the worker had been found to have a degree of hearing loss well before the five years prior to his filing a claim. The tribunal found that the time would not begin running on the worker's hearing loss claim at the time his hearing loss was evident, however, because at that time his level of hearing loss would not have supported a claim.

The tribunal has recently applied apportionment principles to claims for hearing loss. In *Decision 2009-607-AD* (November 30, 2009), the tribunal noted that nothing in Policy 1.2.5AR exempts hearing loss claims from general apportionment principles and nothing in Policy 3.9.11R1 indicates that apportionment principles do not apply to hearing loss claims. The tribunal determined that a portion of the worker's hearing loss was attributable to his employment and deducted the non-compensable impairment rating from the worker's global impairment rating for hearing loss.

In *Decision 2009-663-AD* (January 18, 2010), the tribunal found that policy 1.2.5AR required100 db of hearing loss before a hearing aid could be awarded, but did not require that the 100 db of hearing loss be from occupational noise exposure. The tribunal applied the general principles for causation and found that the occupational noise must contribute "in a material manner" to a worker having at least 100 db of hearing loss.

Stress

The tribunal determined several interesting appeals this past year involving claims for work-related stress. In *Decision 2009-315-AD* (October 14, 2009), the worker sought recognition that she suffered a personal injury by accident pursuant to the provisions of the Government Employees Compensation Act [GECA]. The claim arose out of a prolonged period of bullying at the workplace. The tribunal looked at board policy 1.3.6, which establishes criteria for the adjudication of stress claims under GECA and requires that the work-related events or stressors experienced by the worker must be "unusual and excessive" in comparison to work-related events or stressors experienced by an average worker in the same or a similar occupation. While any one incident in isolation, on the facts of this case, might not have been considered unusual or excessive, together they formed a pattern of harassment and were considered to meet the criteria of the policy.

A worker's claim for stress under GECA was denied in *Decision 2009-231-AD* (October 20, 2009). In that case the worker was a peace officer. In the context of media coverage of a specific prosecution in which he had been involved, the worker heard second-hand that the subject of that prosecution had uttered derogatory and mildly threatening statements about him. The tribunal found that the events complained of by the worker were not traumatic nor were they unusual or excessive within the context of the policy.

In *Decision 2007-950-AD* (October 30, 2009), the tribunal failed to recognize as compensable a worker's musculo-skeletal symptoms, on the basis that they were manifestations of gradual onset stress, which is non-compensable.

Decision 2008-742-AD (February 17, 2010) dealt with a stress claim involving a correctional centre worker. The worker attributed his inability to continue working to a specific incident where he was threatened by an inmate. He described that event as "the straw that broke the camel's back." The tribunal found that the incident was one in a continuum of stressors to which the worker was exposed over time. The tribunal found that to isolate one event and determine whether it was "traumatic" within the words of the act would be to take a subjective view of the question of "traumatic event." The Court of Appeal in *Logan* had specifically warned against taking a subjective view to the question and had stated that to do so would, in essence, be compensating a worker for gradual onset stress, something which is prohibited by the act.

Medical Aid

The limits of what constitutes acceptable "medical aid" under the act continue to be tested. In *Decision 2008-454-AD* (April 30, 2009), the tribunal was faced with a request for a ride-on tractor with snow blower and lawn mower attachments. It was argued that the worker's independence and emotional state would be enhanced by this vehicle, which would permit him to access his scooter and be mobile in times of snow fall. The tribunal found that although it may be understandable that the worker may feel somewhat depressed if housebound due to a snowfall, not every loss a worker suffers is compensable. The tribunal recognized that golf carts or ATVs had been awarded in the past; however, there was insufficient evidence in this case to transform the purpose of the item into a health-care purpose.

In *Decision 2008-783-AD* (May 29, 2009), the tribunal dealt with a request for a voice-activated personal computer by a worker who was quadriplegic. The tribunal determined that it was neither necessary nor expedient as a result of the worker's injury, as the request was made primarily as an alternative form of entertainment for the worker.

General Adjudication Issues

In *Decision 2009-583-AD* (January 29, 2010), the tribunal looked at the board's apportionment policy, 3.9.11R1, in the context of a PMI for industrial bronchitis. The board had apportioned the worker's global respiratory impairment by 50 per cent, attributing 15 per cent to his smoking. Expert opinion on file supported that finding. The tribunal noted that where a permanent impairment is due in part to a non-compensable cause, the board is directed by policy to determine the global PMI, then assign a permanent impairment rating to the non-compensable factor and subtract it from the global rating. When this is not possible, a second method is used, which is to assign the non-compensable factor, a category ranging from mild to severe. The tribunal found that, in light of a reliable opinion regarding the PMI, it was not necessary to resort to the second method of apportionment.

A jurisdictional issue was considered by the tribunal in *Decision 2009-166-AD* (January 19, 2010). A worker had appealed the apportionment aspect of his PMI to a hearing officer. The hearing officer raised and considered on his own accord the worker's actual PMI rating and reduced it. The tribunal did not find that the hearing officer's consideration of the PMI rating issue to be beyond his jurisdiction, as it was part of the board's original decision. The tribunal found that it was open to the hearing officer in that instance to raise an issue not raised by the appellant, but that notice should have been provided before doing so.

Effective Dates

The tribunal considered a number of different arguments surrounding the issue of the effective date of a PMI. *Decision 2008-788-AD* (May 25, 2009) was a case where the worker had a surgical removal of the lense of his right eye as the result of the over-time development of a traumatic cataract. The tribunal found that the Worker's PMI should have had an initial, minimal award prior to the date of his surgery, which would recognize his gradually developing sight impairment.

A similar conclusion was reached in *Decision 2009-146-AD* (October 29, 2009), where the tribunal spread a 3 per cent increase in a worker's PMI over a period of time, given the progressive nature of his condition.

In *Decision 2008-311-AD* (July 17, 2009), a worker sought to have the effective date for his PRI pre-date the termination of his temporary earnings-replacement benefit (TERB). The tribunal held that since the worker was in receipt of the maximum benefits under the act up until his TERB was terminated, he was not entitled to more. His PRI was not back-dated, as to do so would have no practical effect.

Commutation

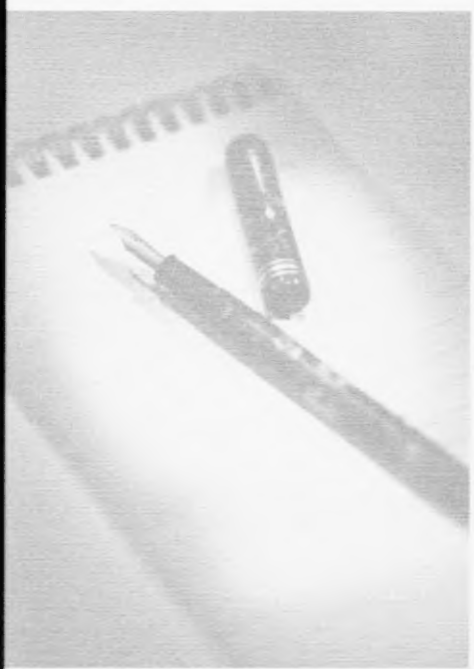
In *Decision 2009-59-AD* (July 30, 2009), the tribunal looked at the differences between the board's commutation policies as they relate to workers injured before March 23, 1990 (policy 3.7.2R), and those injured after March 23, 1990 (policy 3.9.5). Policy 3.9.5 provides for commutation without application, where a worker's cumulative PMI rating is 30 per cent or less. The question was whether or not the cumulative PMI rating was meant to include ratings tied to injuries occurring both before and after March 23, 1990. The tribunal found it reasonable to differentiate between PMIs accumulated for injuries prior to and after March 23, 1990, mainly because the schemes for determining benefit entitlement and the calculation of benefits based on this date were very different. It found that the term "cumulative" was intended only to include pensions for injuries arising after March 23, 1990.

Calculation of Earnings Loss

Several issues arose over the past year regarding the calculation of a worker's earnings loss and the nature of the payments to be included in the earnings loss calculation.

In *Decision 2008-290-AD* (July 29, 2009), the tribunal determined that severance payments paid to a worker following a plant closure were not "earnings" within the plain meaning of the word, as they were payments that had already been earned by the worker as a result of her years of service. It was noted that severance payments were not included explicitly or implicitly in the act or regulations. Board policy that suggested that such payments would be included as "other employment income" as reported on a tax return was found to be inconsistent with the reasonable interpretation of the act.

Decision 2009-71-AD (August 31, 2009) concerned the interpretation of ss. 2(n), 44, and 47 of the act. The tribunal determined that the worker's pre-injury, pre loss-of-earnings (LOE) earnings should be based on his concurrent earnings with both assessed and non-assessed employers, and not merely on his earnings with assessed employers.



The calculation of a worker's long-term rate was at issue in *Decision 2009-152-AD* (September 18, 2009). The worker was self-employed without special protection coverage. She was injured working for an assessed employer. The tribunal found that in the absence of special protection coverage, only earnings from the assessed employer should be used to calculate the worker's long-term rate.

EERB Review

The tribunal considered what constituted a "misrepresentation of fact" as a criterion for allowing a reconsideration of EERB decision in *Decision 2007-993-AD* (September 17, 2009). The tribunal accepted the interpretation of "misrepresentation of fact" from *Decision 2003-863-AD-CA* (September 22, 2004), but raised the possibility that an innocent misrepresentation of fact may also meet the criteria s. 73(1)d.

Decision 2008-692-AD (July 16, 2009) involved an appeal for an earlier effective date for an EERB. The tribunal confirmed that the issue of what is suitable and reasonable employment for the worker, as determined in the estimated potential earnings ability [EPEA] decision, could be revisited at the time of the 36-month review. It further confirmed, however, that any resulting change in the worker's EERB would only be effective from the date of the 36-month review and not the original date of the EPEA.

Assessments

The tribunal issued noteworthy decisions on several assessment appeals. *Decision 2008-741-AD* (June 19, 2009) dealt with the issue of what constituted "notice" under the act. In this case, notice was sent to the employer that it should be registered with the board, but no response was received. The board proceeded with its assessment of the employer. The address used by the board for the employer was the address given by the Registry of Joint Stock Companies. The tribunal found that it was reasonable for the board to use the address in question and noted s. 189 of the act, which states that notices or other communication sent by mail are deemed to have been received by the addressee five business days after mailing. The employer's appeal regarding the date of assessment was denied.

In *Decision 2009-585-AD* and *2009-586-AD* (October 8, 2009), the tribunal held that board policy 8.1.7R applies to decisions of the assessment department. In the absence of new evidence, the classification officer was not permitted to reconsider the classification of an employer. The tribunal further noted that the framework used to classify employers is the SIC, standard industrial classification, published by Statistics Canada. The SIC is a system for classifying companies according to activities in which they are engaged. Generally, the SIC only is to be used by the board in classification. The tribunal found that the board had jurisdiction to apply the North American Industrial Classification System Manual only in certain circumstances, none of which existed in this case.

Third Party Applications

In *Decision 2008-373-TPA* (May 13, 2009), the tribunal held that the respondents' action in the Supreme Court of Nova Scotia, arising out of a motor vehicle accident in Newfoundland, was not statute barred. The respondents had exercised their right under the act to elect to receive compensation and be governed by the laws of Newfoundland. The tribunal found that, as a result, s. 28 of the act no longer applied to the respondents. This decision is currently under appeal.

Appeals from Tribunal Decisions

The tribunal is the final decision maker in the workers' compensation process. The tribunal has wide authority to review board decisions. On a limited basis, the Court of Appeal can review a tribunal decision for errors in law or jurisdiction. The Court of Appeal does not redetermine facts or investigate a claim.

A participant who disagrees with a tribunal decision can ask the Nova Scotia Court of Appeal to hear an appeal of the decision. Such an appeal must be filed with the court within 30 days of the tribunal's decision. Under special circumstances, the court can extend the time to file an appeal.

An appeal has two steps. First, the person bringing the appeal must seek the court's permission to hear the appeal. This is called seeking "leave to appeal." Where it is clear to the court that the appeal cannot succeed, it denies leave without giving reasons and no appeal takes place.

Second, if leave is granted, there is an appeal hearing and the court will allow or deny the appeal.

During this fiscal year, 14 appeals from tribunal decisions were filed with the Court of Appeal:

- 8 decisions were appealed by workers
- 1 decision was appealed by an employer concerning compensation provided to a worker
- 4 decisions were appealed by the board
- 1 "right to sue" application decision (s. 29 of the act) was appealed

During this fiscal year, 16 appeals were resolved as follows:

- 7 appeals were either withdrawn by the person who had asked the Court of Appeal for leave to appeal or dismissed by the court for procedural reasons
- 2 appeals were dismissed by the Court of Appeal at the leave stage
- 4 appeals were decided by the Court of Appeal: all were denied
- 3 appeals were resolved by a consent order directing a rehearing

At the beginning of this fiscal year, there were 10 active appeals before the Court of Appeal. At the end of this fiscal year, there remained 8 active appeals.

Decisions of the Court of Appeal

The court decided four appeals this fiscal year.

Young v. Nova Scotia (Workers' Compensation Appeals Tribunal), 2009 NSCA 35

Mr. Young sought an extended earnings-replacement benefit between 1997 and 2003. He appealed two tribunal decisions, which were addressed by a single decision from the Court of Appeal.

The first tribunal decision assessed conflicting evidence concerning earnings loss. It gave reasons why Mr. Young's chronic pain did not cause his loss of earnings before 2003. A second tribunal decision found that the issue of extended earnings-replacement benefit had already been decided by the first tribunal decision (additionally, the second tribunal decision reassessed Mr. Young's pain-related impairment rating).

The court found that Mr. Young was asking the court to redetermine facts, something it could not do in the absence of an error in law or jurisdiction. As the tribunal had provided a reasoned decision and there was evidence capable of supporting the tribunal's findings, there was no error of law or jurisdiction. The court found that the second tribunal decision correctly determined that the issue of earnings-replacement benefit had already been decided. The court dismissed Mr. Young's two appeals.

Canada Post Corporation v. Nova Scotia (Workers' Compensation Appeals Tribunal), 2009 NSCA 41

The tribunal found that Ms. Almon's disability benefits paid under Canada Post's Pension and Disability Plan are not "earnings" which reduce her benefits payable under the act.

Canada Post appealed the tribunal's decision. The Court of Appeal confirmed the tribunal's decision. The court found that Ms. Almon had "earned" the contributions to the disability plan before she became disabled. She did not "earn" them a second time when they became payable. She had "earned" her disability benefits from Canada Post through contributions paid before her disability.

The court concluded that

> The application of the principles of statutory construction, in my view, points to the conclusion that Ms. Almon's disability benefit from Canada Post Plan was not an "amount ... the worker ... is earning ... after the loss of earnings commences" under s. 38(b)(I) of the Act. The WCAT's conclusion was correct.

Workers' Compensation Board of Nova Scotia v. Nova Scotia (Workers' Compensation Appeals Tribunal), 2009 NSCA 123

This appeal dealt with retroactive chronic pain benefits for workers injured between March 23, 1990, and February 1, 1996, the so-called "window period." When the current act came into force in 1996, it included transitional rules to deal with injuries before 1996. Section 228 is one such transitional rule.

The tribunal found that s. 228 of the act did not prevent payment chronic pain benefits before November 26, 1992. It awarded Mr. Kaye benefits effective October 1, 1990.

The board appealed arguing that s. 228 limited payment of benefits to November 26, 1992.

The Court of Appeal dismissed the appeal, finding that the tribunal correctly found that s. 228 did not apply to limit the effective date for chronic pain benefits as there was no "recalculation." Section 228 only applies when there is a recalculation. The regulations create a new benefit, not a recalculation of a benefit awarded under the former act.

2009 Worker Satisfaction Survey

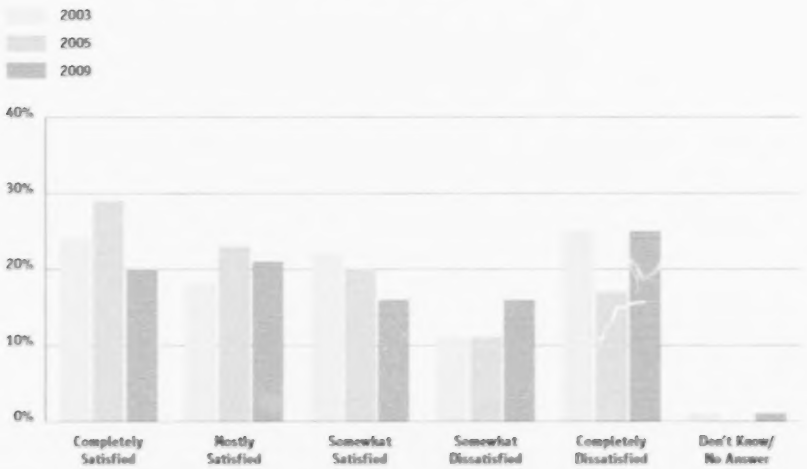
In 2009, Corporate Research Associates conducted an independent survey of workers and employers who had participated in appeals at the tribunal level within the previous six months. Results of the worker survey were compared to the last survey done in 2005. The 2009 survey included the first employer survey conducted by the tribunal, so comparison to previous results was not possible for this group.

Compared with 2005 results, satisfaction with the overall tribunal experience is lower, with the most common reason for feeling dissatisfied being an unsatisfactory appeal outcome.

The satisfaction level recorded for overall tribunal experience is lower in 2009 than in 2005, with four in ten clients considering themselves to be completely or mostly satisfied in this regard. Similar to previous years' results, clients represented by the WAP and those who receive an oral hearing offer the highest level of satisfaction with their overall tribunal experience, while those who represent themselves and who received a paper hearing, which offers far lower levels of satisfaction. Notably, high-risk claims clients are less likely than medium-risk claims clients to express satisfaction with their overall experience with the tribunal (see Figure 12).

Figure 12

Satisfaction with Overall WCAT Experience – Worker



Those who are satisfied with their overall tribunal experience explain that they feel this way given how their claim was handled, because of a positive resolution, or as a result of having received good service, the attitude of staff, being treated fairly, the tribunal's knowledgeable staff, and a quick response. In contrast, clients who are dissatisfied with their overall experience or who are only somewhat satisfied are most likely to feel this way because of the outcome of their appeal.

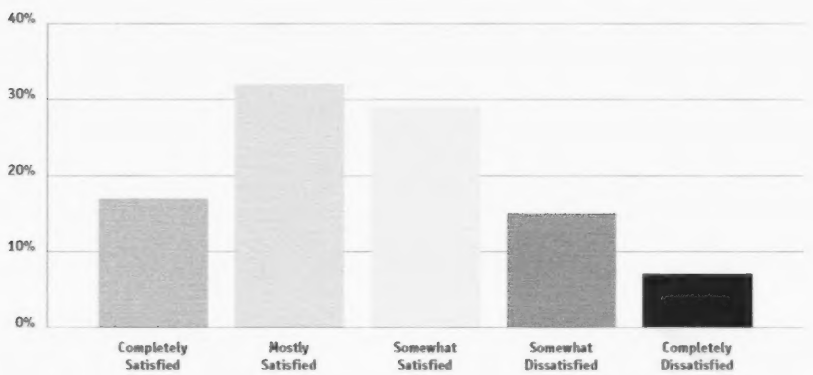
2009 Employer Satisfaction Survey

Employer satisfaction with their overall tribunal experience is mixed.

One-half of employers or their outside counsel representatives consider themselves to be completely or mostly satisfied with their overall experience with the tribunal, while another three in ten say they are somewhat satisfied with their experience. Conversely, about two in ten state they are dissatisfied with their experience with the tribunal (see Figure 13).

Those employer or outside counsel respondents who have participated in three or more tribunal hearings over the years tend to be modestly more satisfied with their overall tribunal experience compared to those who have participated in only one or two such hearings. As well, those employers whose appeal outcome was accepted are more satisfied than are those whose appeal was denied.

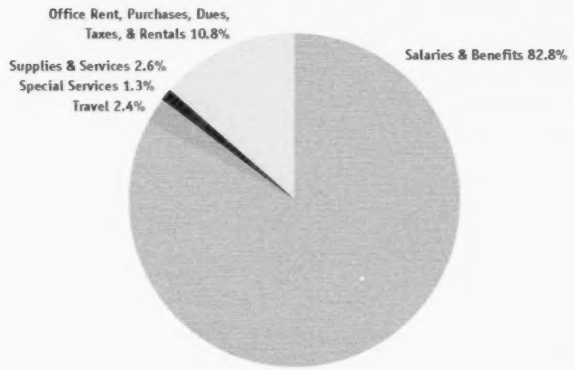
Figure 13
Satisfaction with Overall WCAT Experience – Employer



Financial Operations

In 2009–10, the tribunal's total expenditures were within 78 per cent of the original authority and within 97 per cent of our revised forecast. Net expenditures totaled $1,575,796, a slight increase from the previous year (see Figure 14).

Figure 14
Budget Expenditures
(for the Fiscal Year Ending March 31, 2010)


Office Rent, Purchases, Dues, Taxes, & Rentals 10.8%
Supplies & Services 2.6%
Special Services 1.3%
Travel 2.4%
Salaries & Benefits 82.8%

Appendix

Figure 1 – Decisions by Issue Categories – Worker

Recognition of Claim	129
New/Additional Temporary Benefits	116
New/Increased Benefits for Permanent Impairment	305
Medical Aid (Expenses)	92
New/Additional Extended Earnings Replacement Benefits	87
New Evidence	22
Chronic Pain	233
Termination of Benefits for Non-Compliance	19
All other issues	74
Total	1077

Figure 2 – Appeals Received

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Fiscal 06–07	70	118	104	81	100	79	86	101	92	105	83	70	1089
Fiscal 07–08	72	82	59	105	64	65	116	118	100	85	57	53	976
Fiscal 08–09	66	65	56	71	45	52	85	70	97	69	47	111	834
Fiscal 09–10	73	94	86	91	80	63	66	58	65	47	56	70	849

Figure 3 – Decisions Rendered

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Fiscal 06–07	42	43	68	57	54	74	80	85	60	89	88	75	815
Fiscal 07–08	82	90	74	76	72	81	75	69	44	87	79	63	892
Fiscal 08–09	67	63	68	71	65	63	69	58	45	63	60	70	762
Fiscal 09–10	52	71	65	66	56	72	67	82	52	69	68	63	783

Figure 4 – Decisions by Mode of Hearing

	Oral Hearings	Paper Review	Total
Fiscal 06–07	561	254	815
Fiscal 07–08	586	306	892
Fiscal 08–09	561	201	762
Fiscal 09–10	539	244	783

Figure 5 – Appeals Outstanding at Year End

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Fiscal 06–07	298	368	401	418	458	460	459	468	497	507	497	483
Fiscal 07–08	469	453	428	452	438	416	451	493	543	535	503	481
Fiscal 08–09	473	474	459	454	429	417	430	437	483	485	472	506
Fiscal 09–10	520	541	555	571	584	558	549	518	519	493	473	475

Figure 6 – Timeliness to Decision (cumulative percentage by month)

Months	1	2	3	4	5	6	7	8	9	10	11	>11
Fiscal 06–07	1.84	11.04	35.46	56.32	70.67	81.10	87.85	91.29	93.62	95.46	96.44	100
Fiscal 07–08	0.22	4.14	16.91	39.08	57.45	70.10	80.29	84.99	88.58	90.59	93.84	100
Fiscal 08–09	0.79	2.76	9.71	27.56	46.33	61.94	71.78	80.84	86.09	90.81	93.18	100
Fiscal 09–10	0.89	4.60	17.75	33.97	49.81	64.62	74.84	81.23	85.19	88.12	90.29	100

Figure 7 – Decisions by Appellant Type

	Total
Worker Claim Appeals*	755
Employer Claim Appeals	20
Employer Assessment Appeals	7
Section 29 Applications	1
Total	783

** Employer participation in worker appeals 25%.*

Figure 8 – Decisions by Issue Categories – Employer

Acceptance of Claim	8
Extent of Benefits	17
Assessment Classification	0
Assessment Penalties	0
Other Claims Issues	1
Other Assessment Issues	3
Total	29

Figure 9 – Decisions by Outcome

Allowed	215
Allowed in Part	134
Denied	332
S29	1
RTH	101
Moot	0
Preliminary Decisions*	0
Correcting Decisions*	5
Total Final Decisions	783

**Does not reduce the number of appeals outstanding*

Figure 10 – Decisions by Representation

Self-Represented	144
Workers' Advisers Program	485
Injured Worker Groups, Outside Counsel & Others	154

Figure 11 – Appeals Before the Courts at Year End

	Court of Appeal Active Matters	Appeals Before the Supreme Court of Canada	Total
Fiscal 06–07	15	0	15
Fiscal 07–08	18	0	18
Fiscal 08–09	10	0	10
Fiscal 09–10	8	0	8

Figure 14 – Budget Expenditures

(for the Fiscal Year Ending March 31, 2009)

	Authority	Final Forecast	Actual Expenditures
Salaries & Benefits	$1,609,400.00	$1,325,300.00	$1,307,728.00
Travel	$56,000.00	$42,500.00	$37,211.00
Special Services	$85,000.00	$25,000.00	$21,026.00
Supplies & Services	$59,800.00	$51,400.00	$41,845.00
Office Rent, Purchases, Dues, Taxes, & Rentals	$210,500.00	$182,800.00	$171,286.00
Sub Total	**$2,020,700.00**	**$1,627,000.00**	**$1,579,096.00**
Less Recoveries	$0.00	$0.00	$3,300.00
Totals	**$2,020,700.00**	**$1,627,000.00**	**$1,575,796.00**